

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
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5 ROYAL INDEMNITY COMPANY,)
6 Plaintiff,) C.A. No.
7 vs.) 05-165-JJF
8 PEPPER HAMILTON, LLP,)
9 W. RODERICK GAGNE, FREED)
10 MAXICK & BATTAGLIA CPAs,) TRACK I
11 PC, MCGLADREY & PULLEN,) VOLUME I
12 LLP, MICHAEL ACQUINO, and)
13 FREED MAXICK SACHS & MURPHY,)
14 P.C.,)
15 Defendants.)
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18 DEPOSITION of GARY HAWTHORNE, taken at 601 South
19 Figueroa Street, 16th Floor, Los Angeles,
20 California, commencing at 1:29 P.M., Wednesday,
21 April 25, 2007, before Ricki Q. Melton, CSR 9400,
22 RPR 45429.

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25 PAGES 1 - 252

1 GARY HAWTHORNE,
2 the witness, having been first administered
3 an oath in accordance with CCP section 2094,
4 testified as follows:
5

6 MR. BARNOWSKI: Just for housekeeping 01:32:27
7 matters, due to plane difficulties, not anyone's 01:32:28
8 fault, we have had a delay of about three hours 01:32:33
9 this morning, and I think the parties have all 01:32:36
10 agreed that the way we're going to make up that 01:32:38
11 time is starting at 9:00 every morning instead of 01:32:40
12 9:30 and finishing at 6:00 every afternoon instead 01:32:43
13 of 5:30, subject to Mr. Hawthorne not getting 01:32:46
14 overly tired in the afternoon, and he has promised 01:32:49
15 to let us know if that happens. 01:32:52

16 Is that fair, Mr. Hawthorne? 01:32:54

17 THE WITNESS: That's fair. 01:32:55

18 01:32:55

19 EXAMINATION 01:32:55

20 01:32:55

21 BY MR. BARNOWSKI: 01:32:55

22 Q. Good morning -- good afternoon. 01:32:56

23 You understand you are under oath? 01:32:57

24 A. Yes, I do. 01:32:59

25 Q. Other than scheduling matters, trying to 01:33:00

Page 22

1 Q. So you are sure that you were No. 2. The 01:44:52
2 question is whether Perry was a co-No. 2. 01:44:55
3 Is that fair? 01:44:58
4 A. That's fair. 01:44:59
5 Q. Okay. Did you subsequently become the 01:44:59
6 president and COO of SFC? 01:45:02
7 A. Yes, I did. 01:45:04
8 Q. Do you remember when that happened? 01:45:05
9 A. No, I don't. 01:45:06
10 Q. Okay. Again, would that have put you 01:45:07
11 below Andrew Yao but no one else at the company? 01:45:09
12 A. Correct. 01:45:12
13 Q. Okay. So at that point in time, were you 01:45:13
14 the No. 2 at SFC, or is it still that you could 01:45:14
15 have been co-No. 2 with Perry? 01:45:17
16 A. Could have been co-No. 2. 01:45:19
17 Q. You mentioned a second ago that you were 01:45:22
18 on the board of SFC; is that right? 01:45:24
19 A. Correct. 01:45:26
20 Q. Who else was on the board? 01:45:27
21 A. Perry Turnbull and Andrew Yao. 01:45:28
22 Q. So just the three of you? 01:45:32
23 A. Correct. 01:45:34
24 Q. Okay. And you had a position on the board 01:45:34
25 too; correct? 01:45:36

Page 972

1 Q. Okay. Now, Pepper Hamilton and Rod Gagne 03:46:30
 2 you were asked some questions about when the 03:46:35
 3 counsel for Royal was asking you questions. 03:46:38
 4 A. Uh-huh. 03:46:40
 5 Q. And I think you said they were SFC's 03:46:41
 6 primary outside counsel; is that fair? 03:46:45
 7 A. Yes, it is. 03:46:48
 8 Q. How often did you see Rod Gagne? 03:46:48
 9 A. Generally only -- the most I saw Rod is 03:46:53
 10 when we were doing a securitization, and I would 03:47:03
 11 generally -- the paper document signing would be at 03:47:06
 12 Pepper Hamilton's office, and on those occasions 03:47:09
 13 when we have a transaction is when I saw Rod. 03:47:13
 14 Q. So that would be perhaps eight times 03:47:15
 15 overall? 03:47:18
 16 A. Yeah. Maybe sporadically in between. 03:47:19
 17 Q. Okay. 03:47:22
 18 A. But in general, that was probably it be 03:47:23
 19 it. It wasn't real frequent. 03:47:25
 20 Q. So maybe fewer than a dozen times overall? 03:47:26
 21 MR. BARNOWSKI: Object to form. 03:47:29
 22 THE WITNESS: I would say so. 03:47:30
 23 BY MS. AINSLIE: 03:47:31
 24 Q. Okay. You said that you saw him in 03:47:32
 25 connection with the securitizations because you 03:47:35

Page 973

1 would then go to Pepper Hamilton for some work with 03:47:38
2 the documents. 03:47:43

3 A. To do the signing. 03:47:45

4 Q. And why were you doing the signing? 03:47:46

5 A. My name was on there on behalf of Student 03:47:48
6 Finance Corporation and Student Loan Services. 03:47:53

7 Q. Were you the secretary? 03:47:55

8 A. Yes. 03:47:57

9 Q. And did -- 03:47:57

10 A. I believe that was the capacity. 03:47:59

11 Q. Okay. Did you ever see Rod Gagne at SFC's 03:48:01
12 offices? 03:48:08

13 A. Maybe a couple of times during the course 03:48:13
14 of my stay there. 03:48:16

15 Q. Did he ever, to your knowledge, attend any 03:48:17
16 board meetings, board of directors meetings? 03:48:20

17 A. No. 03:48:22

18 Q. Did he ever attend any committee meetings, 03:48:23
19 to your knowledge? 03:48:25

20 A. No. 03:48:26

21 Q. Did Mr. Gagne have any role in deciding 03:48:27
22 anybody's compensation -- 03:48:31

23 MR. BARNOWSKI: Object to form. 03:48:32

24 BY MS. AINSLIE: 03:48:33

25 Q. -- at SFC? 03:48:33

		Page 974
1	A. Not that I'm aware of.	03:48:34
2	Q. To your knowledge, did he participate in	03:48:35
3	hiring and firing employees at all?	03:48:38
4	MR. BARNOWSKI: Object to form.	03:48:40
5	THE WITNESS: Not to my knowledge, no.	03:48:41
6	BY MS. AINSLIE:	03:48:42
7	Q. To your knowledge, did he tell anybody at	03:48:43
8	SFC what to do?	03:48:45
9	MR. BARNOWSKI: Object to form.	03:48:47
10	THE WITNESS: No, not that I can recall.	03:48:49
11	BY MS. AINSLIE:	03:48:50
12	Q. Is it fair to say, then, that his capacity	03:48:50
13	was to advise and that Mr. Yao and the other	03:48:53
14	officers would then decide whether to accept the	03:48:55
15	advice?	03:48:58
16	MR. BARNOWSKI: Object to form.	03:48:58
17	THE WITNESS: Yes.	03:49:00
18	BY MS. AINSLIE:	03:49:02
19	Q. Okay. You have seen a lot of e-mails in	03:49:02
20	the course of the last few days.	03:49:04
21	Do you recall any on which Mr. Gagne --	03:49:07
22	from Mr. Gagne? To Mr. Gagne?	03:49:10
23	MR. BARNOWSKI: Object to form.	03:49:13
24	THE WITNESS: I think I may have seen one	03:49:14
25	document that had his e-mail address on it.	03:49:16